

AUG 25 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAUL OROZCO,

Defendant - Appellant.

No. 04-10572

D.C. No. CR-04-00003-HDM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted August 21, 2006^{**}

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Paul Orozco appeals from the 120-month sentence imposed after his guilty-plea conviction for possession of methamphetamine with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii). We have jurisdiction

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 28 U.S.C. § 1291 and affirm.

Orozco's contention that the district court erred in imposing the statutory mandatory minimum sentence based upon the existence of a prior drug-trafficking conviction has no merit. The fact of a prior conviction does not need to be admitted by the defendant or proven to a jury beyond a reasonable doubt for purposes of sentencing. *See United States v. Booker*, 543 U.S. 220, 244 (2005); *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting the continuing vitality of *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998)).

AFFIRMED.